IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1230 of 1999

in

SPECIAL CIVIL APPLICATIONNo 5255 of 1995

with

CIVIL APPLICATION No 15317 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NARAYANBHAI DHARMABHAI KADAM

Appearance:

MR PREMAL JOSHI, AGP, for Appellants

MR NILESH A PANDYA for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE A.M.KAPADIA

Date of decision: 27/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Service of notice is waived by L.A., Mr.Nilesh A. Pandya for the respondent. Upon joint request and in view of the controversy involved in the matter, the appeal is taken up for final hearing, today itself.

The appellants have questioned the legality and validity of the order of the learned single Judge, recorded on 22.4.99 in Special Civil Application No.5255 of 1995, whereby, the petition of the respondent for the revision of pay scale of Rs.1150-1500 under the provision of Gujarat Civil Services (Revision of Pay) Rules, 1987, with effect from 1.1.86 came to be allowed. Being aggrieved by the directions contained in the impguned order, the respondents in the petition have, now, come up before this Court by filing this appeal under clause 15 of the Letters Patent.

The respondent is the original petitioner, who, came to be inducted in the employment in the year 1949 under original respondent No.3, Director of Medical Education and Research, New Civil Hospital, Ahmedabad as a Ward servant in class IV. Thereafter, in the year 1970, he came to be appointed on the post of Operation Theatre Assistant. The original petitioner contended that in view of revision of pay scale, his scale should have been fixed in the pay-scale of Rs.1150-1500, as he was, previously, drawing salary in the pay-scale of Rs.260-430. The original respondent-authorities, granted pay scale of Rs.775-1025. That is how, the legal battle was started by filing the writ petition. The learned single Judge, held in favour of the original petitioner placing reliance on the decision of the learned single Judge in Special Civil Application No.2325 of 1994, decided on 30th June, 1994.

Learned AGP, Mr.Joshi on behalf of the original respondents, appellant before us, vehemently, criticised the fixation of pay of the original petitioner in the pay scale of Rs.1150-1500 by the learned single Judge. He has drawn our attention to the earlier pay scales. There is no dispute about the fact that for the post of Operation Theatre Assistant before the Gujarat Civil Services (Revision of Pay) Rules, 1987 (hereinafter referred to as ROP Rules, 1987) there was only one pay-scale. The said post was, therefore, in the running

pay-scale of Rs.200-260. By virtue of ROP Rules 1987, the original pay scale of Rs.200-260 came to be revised, upwardly, to Rs.775-1025. ROP Rules 1987 is placed on record for our examination and we found the relevant entry No.82 speaks of the post of Operation Theatre Assistant carrying running pay scale of Rs.200-260 revised to Rs.775-1025, whereas, item No.207 also pertains to post of Operation Theatre Assistant, original pay-scale of which was Rs.260-430, upwardly, revised to Rs.1150-1500. It appears that confusion has arisen on account of two pay-scales in respect of one post. It has been noticed from the record and the ROP Rules 1987 and ROP Rules 1998 that bifurcation came to be made with regard to pay-scale for the same post on the basis of educational qualification, like that, matriculation. It is, evidently, clarified in a notification of the Finance Department dated 20th March, 1991, copy, whereof is produced for our perusal. It is, amply, clear from the record that, earlier post of Operation Theatre Assistant carried running time-scale of Rs.200-260 which was revised to time-scale of Rs.775-1025, whereas, the same post with incumbent matriculate with two years experience was given the time-scale of Rs.260-430 and the same came to be, upwardly, revised to time scale of Rs.1150-1500.

Following aspects have emerged, unquestionably, from the record of the present case:

(1) The respondent before us, original-petitioner, is not matriculate. Obviously, therefore, there would not arise the question of experience of two years with SSC, which is the scale prescribed for the post in the time-scale of Rs.260-430, which later on revised by ROP 1987 to Rs.1150-1500.

(2) There was only one time-scale when the original petitioner came to be promoted in the cadre of Operation Theatre Assistant from the post of Ward servant, which was in class IV. No doubt, he was appointed in the year 1949 as a Ward Servant in class IV and was working in Operation Theatre in Civil Hospital, Ahmedabad.

(3) The original petitioner came to be promoted and appointed on the post of Operation Theatre Assistant from the post of Ward Servant in 1970 and at that time, there was, only, one time-scale of Rs.200-260.

(4) Division of post of Operation Theatre Assistant into two classes came after 1.1.86, as stated

hereinabove.

In view of the aforesaid unquestionable and incontrovertible factual scenario emerging from the record and the ROP Rules 1987 and 1998, there is no any manner of doubt that the original petitioner, respondent before us, is not entitled to time-scale of Rs.1150-1500 as he was not in the time-scale of Rs.260-430 on the date when ROP Rules 1987 came into operation. Therefore, the conclusion of the learned single Judge in the impugned judgment, in our opinion, with due respect, is erroneous and based on misreading of facts. It is, in this context, the appeal is required to be allowed so as to put the incorrect and erroneous impugned order into its legal shape.

Consequently, the appeal is allowed and the impugned judgment and order is set aside. The petition shall stand rejected. In view of the facts of the case, parties are directed to bear their own costs.

No order in the Civil application.

(J.N.Bhatt, J.)

(A.M.Kapadia, J.)

(vjn)